

## **PROPOSED TEXT: CITE AND FINE IMPLEMENTATION REGULATIONS**

### **Article 18.3. Citations**

#### **2907.1 Citation - Order of Correction and Assessment of Fine**

(a) A citation issued pursuant to Business and Professions Code Section 10080.9 will address a violation or violations of the Real Estate Law and Subdivided Lands Law (Division 4 of the Business and Professions Code), and any regulations adopted pursuant to those laws. The Commissioner is authorized to issue a citation containing an order of correction and/or assessing a fine for the violation of the laws referred to above.

(b) A citation may be issued to a person or entity, including partnerships, corporations or associations, whether licensed or unlicensed by the Department.

(c) The citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated.

(d) Service of a citation shall be made in accordance with the provisions of Sections 8311 and 11505(c) of the Government Code. Service of a citation issued under Business and Professions Code Section 10080.9 may be made by certified mail at the address of record of a licensee cited, or to the last known mailing, business, or residence address of an unlicensed person or entity cited.

(e) The time allowed to comply with an order of correction shall be specified in the citation, taking into account the nature of the correction required. Failure to correct the violation shall be grounds for further discipline under Section 10177(d) of the Code.

(f) The cited person or entity may request an extension of the time to comply with the order if the cited person or entity is unable to complete the correction or pay the fine within the time set forth in the citation. The request must be made in writing, within the time set forth for correction or payment of fine, and must set forth extenuating circumstances and good cause warranting the extension. Determination of an extension is within the discretion of the Commissioner.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10080.9 and 10177(d), Business and Professions Code, and Sections 8311 and 11505(c), Government Code.

**2907.2. Citation – Applicability of Citation and Amount of Administrative Fine**

(a) When determining whether to apply the citation and fine process in lieu of a formal accusation, and in determining the amount of the fine assessed, the Commissioner shall take into consideration the following:

- (1) The gravity of the violation or violations;
- (2) Actual injury or risk of potential harm to consumers as a result of the violation;
- (3) Whether the investigation and/or citation addresses multiple violations;
- (4) Nature and extent of the person's or entity's history of violations of the Real Estate Law or Subdivided Lands Law and/or prior disciplinary action by the Department;
- (5) The extent to which the person or entity has exhibited good faith;
- (6) Degree of cooperation with the Department's investigation;
- (7) Attempts to mitigate any loss, damage, or harm caused by the violation;
- (8) Other facts relevant to the violation that present good cause for aggravation or mitigation of a penalty.

(b) Where the person cited holds a real estate license, the total fine assessment in the citation shall not exceed \$2,500, even where a citation lists more than one violation. Each of the violations listed will relate to the same Departmental investigation.

(c) Where the person cited is an unlicensed person, a citation may issue for each unlicensed act. Before assessing an administrative fine via citation for a violation of Section 10130, Section 10166.02, or Section 10167.2 of the Business and Professions Code for an activity or activities requiring a license and/or license endorsement, the Commissioner shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of the factors described in subdivision (a), above, and the following factors:

- (1) Whether the unlicensed person or entity committed numerous or repeated violations;
- (2) Whether the unlicensed person or entity falsely represented that he/she/it was licensed;
- (3) Whether the unlicensed person or entity committed any act that would be cause for disciplinary action against a licensee;

(4) Whether the unlicensed person or entity claimed or received compensation for the acts, and the amount of compensation claimed or received;

(5) Whether the unlicensed person or entity was previously issued an Order to Desist and Refrain by the Department, or was formerly licensed and/or disciplined as a licensee and reasons why that license is no longer in effect.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10080.9, 10130, 10166.02, and 10167.2, Business and Professions Code.

### **2907.3. Appeal of Citation**

(a) The cited person or entity may contest any or all of the following aspects of the citation:

(1) The occurrence of a violation of the Real Estate Law;

(2) Reasonableness of an order of correction;

(3) The period of time allowed for correction;

(4) The amount of an administrative fine assessed in the citation.

(b) Within 30 days after receipt of the citation, the person or entity cited may make a written notification to the Commissioner that the person or entity intends to request a formal hearing on the citation. The Commissioner may extend the 30-day period for a written appeal upon the showing of good cause.

(c) The Commissioner's designee shall hold the citation review conference with the person or entity cited within 60 days from the receipt of the notification of intention to request a formal hearing.

(d) After the citation review conference, the Department shall serve notice, in writing to the person or entity cited, regarding whether the citation remains unchanged, or is amended or dismissed. Such notice shall include information enabling the person or entity cited to request a formal hearing on the citation in accordance with subdivision (d) of Section 10080.9 of the Code.

(e) If, within 30 days from the receipt of the post-conference notice, the person or entity fails to request a formal hearing on the citation, the citation and fine shall be deemed final.

(f) The Department may seek, pursuant to Section 10106 of the Code, to recover its costs for investigation and enforcement of a citation should the case proceed to formal hearing.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10080.9(c) and (d), and Section 10106, Business and Professions Code.

#### **2907.4. Time for Payment of Administrative Fine for Citation**

(a) An administrative fine assessed pursuant to Section 10080.9 of the Business and Professions Code must be submitted to the Department by the deadline for payment stated on the citation or, if the citation is appealed, no later than 30 calendar days after (1) the date of receipt of notice following a citation review conference, if such review conference is requested, or (2) the date of adoption of the decision following a formal hearing, if such hearing is requested. Failure to complete payment within this time may result in further action as specified by Section 10080.9(f) of the Code, including the denial of renewal of a real estate license and/or mortgage loan originator license endorsement, and shall be grounds for further discipline under Section 10177(d) of the Code.

(b) In no event may a real estate license or mortgage loan originator license endorsement be issued, following application, to a person whose fine remains outstanding or who has not complied with the terms of the citation.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10080.9(f) and 10177(d), Business and Professions Code.